

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**RANDALL S. EBLING**

Claimant

VS.

**CITY OF WICHITA**

Respondent

Self-Insured

)  
)  
)  
)  
)  
)  
)

Docket No. 222,086

**ORDER**

Claimant requested review of the Award dated January 15, 1998, entered by Administrative Law Judge Nelsonna Potts Barnes. The Appeals Board heard oral argument on July 15, 1998.

**APPEARANCES**

Robert R. Lee of Wichita, Kansas, appeared for the claimant. Edward D. Heath, Jr. of Wichita, Kansas, appeared for the respondent, a qualified self-insured.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the parties' stipulations are set forth in the Award.

**ISSUES**

The Administrative Law Judge denied claimant's request for disability benefits on the basis claimant failed to prove he was disabled for a period of at least one week from earning full wages at his employment. Claimant requested that the Appeals Board review that finding.

Claimant also requested that the Appeals Board decide the nature and extent of claimant's disability. At oral argument, the parties agreed that if the Appeals Board decides the first issue in claimant's favor, then an award for permanent partial disability compensation should be entered based upon an 8.5 percent functional impairment to the body as a whole.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, the Appeals Board finds as follows:

Claimant alleges he is entitled to disability benefits for the work-related injury he received to his low back on January 4, 1996. Claimant was injured while escorting an intoxicated and combative prisoner, who also collapsed, causing claimant and another law enforcement officer to carry him.

Claimant continued to work for respondent immediately after the accident. The Appeals Board notes claimant later modified his work duties, but this was not done to accommodate his injury or the restrictions given him as a result of the January 4, 1996, accident. Claimant did not miss one consecutive week from work.

Claimant received ongoing medical care and was required to participate in physical therapy. Claimant did miss work due to his injury for medical treatment. The Administrative Law Judge found the total amount of time claimant missed from work for medical treatment due to the injury was 141.56 hours.

The Appeals Board finds this does constitute one week as required by K.S.A. 44-501(c) and claimant is entitled to receive permanent partial disability benefits because the "period of at least one week" referred to in K.S.A. 44-501(c) can be an aggregate and need not be consecutive full days. At the time of claimant's injury, the statute provided in pertinent part:

Except for liability for medical compensation, as provided for in K.S.A. 44-510 and amendments thereto, the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed.

In Boucher v. Peerless Products, Inc., 21 Kan. 977, 911 P.2d 198, *rev. denied* 260 Kan. 991 (1996), this court found K.S.A. 44-501(c) to be plain and unambiguous that compensation to an injured employee is limited to medical expenses if the employee is not disabled for at least one week from earning full wages at the work for which he or she is employed.

Subsequent to claimant's injuries, K.S.A. 44-501(c) was amended to delete the above-quoted section. K.S.A. 1996 Supp. 44-501(c). This amendment provided that it was to be applied to injuries that occurred prior to April 4, 1996, the effective date of the amendment, unless the claim had been fully adjudicated. K.S.A. 1996 Supp. 44-501a.

In Osborn v. Electric Corp. of Kansas City, 23 Kan. App. 2d 868, 936 P.2d 297, *rev. denied* 262 Kan. \_\_\_\_ (1997), a case involving the retroactive application of the amended

section of 44-501(c), the Court of Appeals held, *inter alia*: "In workers compensation cases, the law in effect at the time of the injury governs the rights and obligations of the parties." 23 Kan. App. 2d 868, Syl. ¶ 8. Thus, the 1996 amendment to K.S.A. 44-501(c) had prospective application only and did not apply to this claimant's claim for compensation.

Respondent argues that because K.S.A. 44-501(c) applies to this claim, claimant is only entitled to his medical expenses. The Appeals Board disagrees. The Kansas Supreme Court recently reaffirmed the proposition that:

Workers compensation statutes are to be liberally construed to effect legislative intent and award compensation to a worker where it is reasonably possible to do so.

Kinder v. Murray & Sons Construction Co., Inc., Docket No. 76,296, Syl. ¶ 1, (Kan., *opinion filed* 4/17/98).

The Appeals Board concludes that claimant is entitled to the aggregate of the time he was off work due to his injury. In doing so, claimant clearly missed in excess of one week of work. Missing work for medical treatment related to the accident is equivalent to being disabled from earning wages.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes dated January 15, 1998, should be, and is hereby, reversed.

**WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR** of the claimant, Randall S. Ebling, and against the respondent, City of Wichita, a qualified self-insured, for an accidental injury which occurred January 4, 1996, and based upon an average weekly wage of \$420.98 for 35.28 weeks of permanent partial general disability compensation at the rate of \$280.67 per week or \$9,902.04, for a 8.5% permanent partial general disability, making a total award of \$9,902.04, all of which is currently due and ordered paid in one lump sum minus any amounts previously paid.

Respondent is ordered to pay all reasonable and related medical expenses.

An unauthorized medical allowance of up to \$500 is awarded upon presentation to respondent of an itemized statement verifying same.

Future medical will be awarded upon proper application to and approval by the Director.

Claimant's attorney fee contract is hereby approved insofar as it is not inconsistent with K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Barber & Associates	
Transcript of Regular hearing	\$ 131.70
Ireland Court Reporting, Inc.	
Deposition of Randall S. Ebling	\$ 89.00

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1998.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Robert R. Lee, Wichita, KS  
Edward D. Heath, Jr., Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director